

The Honorable J. Kelley Arnold

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

DUANE BOYLE, through his guardians
Marion and Robert Boyle, et al.,

Plaintiffs,

vs.

ROBIN ARNOLD-WILLIAMS, in her
official capacity as the Secretary of the
Washington Department of Social and
Health Services,

Defendant.

No. C01-5687JKA

AGREED PROTECTIVE ORDER

This matter having come before this Court upon the Parties' Joint Motion For a Protective Order, it is hereby ORDERED, ADJUDGED and DECREED that a Protective Order shall be issued in accordance with Civil Rule 26(c). It is further ORDERED that:

1. This Order shall govern the designation, production, handling, and treatment of, as well as the provision of access to the public, of all confidential documents and information obtained or observed by the parties or their agents which is confidential pursuant to RCW 70.02.050, RCW 74.04.060, RCW 42.17.311, and 45 C.F.R. Parts 160-164 and which is

1 obtained or observed as a result of or in the course of this litigation. The purpose of this Order
 2 is to protect the privacy of the individuals whose confidential public assistance records and
 3 health information is sought in discovery or will be used at trial.

4 2. Documents:

5 When used in this Order, the word “documents” means all written, recorded or graphic
 6 matter whatsoever, including, but not limited to, materials produced pursuant to Civil Rule 34,
 7 by subpoena or by agreement, deposition transcripts and exhibits, interrogatory answers,
 8 responses to requests for admission, and any portion of any Court papers that quote from any
 9 of the foregoing.

10 3. Scope and Designation:

11 Any and all documents that include or reveal the names or other personally identifying
 12 information of past or current individual Division of Developmental Disabilities (DDD)
 13 clients, any persons who have made application for DDD services, or past or present clients or
 14 constituents of Plaintiffs, shall be governed by this Order. As used herein, “personally
 15 identifying information” shall include, but is not limited to, health care record information, any
 16 information from which the identity of a client or constituent may be ascertained, and any
 17 information which is deemed confidential pursuant to RCW 74.04.060, RCW 70.02.050,
 18 RCW 42.17.311, and 45 CFR Parts 160-164.

19 4. Challenge to Confidentiality Designation:

20 If any party objects to the designation of any document(s) produced or filed as
 21 “confidential,” under the above definition, that party may file a motion to resolve the dispute
 22 regarding whether such document(s) qualifies for confidential status. Interested parties shall
 23 attempt to resolve any such disagreements before submitting them to the Court. Pending
 24 resolution of a dispute over the status of a document under this Order, that document shall be
 25 considered a confidential document subject to the protection of this Order. At all times, the

1 party seeking to assert a document's confidentiality bears the burden of showing good cause
 2 pursuant to Civil Rule 26(c).

3 5. Identification of Counsel:

4 For the purpose of this Order, "counsel" or "attorney" means counsel of record for the
 5 parties of this action and all of their employees, contractors, sub contractors, agents and
 6 experts.

7 6. Use of Confidential Material:

8 Confidential records shall be used solely for the purpose of conducting the action
 9 entitled *Boyle et al. v. Arnold-Williams*, Cause No. C01-5687JKA, unless the person who is
 10 the subject of such confidential material, or that person's legal guardian, if applicable,
 11 authorizes its use for any other particular purpose.

12 7. Use and Designation of Confidential Material in Court Filings:

13 When the parties file pleadings, motions, affidavits, declarations, deposition transcripts,
 14 briefs, or other documents with the Court that refer to individuals covered by this Agreed
 15 Protective Order, the parties must ensure that the individuals' names are not used and rather
 16 must replace each name with a designated letter or letters. Absent circumstances not in the
 17 control of either party, each individual covered by this Protective Order must be identified
 18 during discovery, and the parties shall agree upon the unique assigned letter(s) designation as
 19 soon as possible following identification of the individual and exchange of confidential
 20 records. In the event a party files pleadings with the Court that refer specifically to a person
 21 whose confidential information is the subject matter of this Protective Order and whose
 22 identifying initials or letters have not yet been agreed to, that party must notify opposing
 23 counsel as to the identity and corresponding designated letter(s) contained in the pleadings.

1 If the individual who is the subject of the document(s) filed with the Court, or that
 2 person's legal guardian, if applicable, authorizes a party to use the individual's name, any party
 3 may reference the individual by name in the document(s) filed with the Court.

4 Portions of confidential records (such as medical records) may be attached to any
 5 pleadings, motions, affidavits, declarations, deposition transcripts, briefs, or other documents
 6 filed with the Court, but all records that contain personally identifying information must be
 7 filed under seal. When submitting or filing records with the Court under seal, the parties shall
 8 use the following designation:

9 **CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER. THIS**
 10 **ENVELOPE, CONTAINING THE ABOVE-IDENTIFIED PAPERS FILED**
 11 **BY [NAME OF THE FILING PARTY], IS NOT TO BE OPENED NOR**
 12 **THE CONTENTS THEREOF DISPLAYED TO ANYONE OTHER THAN**
 13 **THE COURT AND ITS STAFF, OTHER THAN BY COURT ORDER OR**
 14 **AGREEMENT OF THE PARTIES.**

15 Only the confidential records will be filed under seal. The pleadings, motions, affidavits,
 16 declarations, deposition transcripts, briefs, or other documents filed with the Court will not be
 17 filed under seal.

18 If the person who is the subject of the confidential records or that person's legal
 19 guardian, if applicable, authorizes a party to use the confidential records, any party may use or
 20 file the records in an unsealed form. Upon filing with the Court, the portion of the confidential
 21 record that has not been filed under seal becomes part of the public record.

22 8. Disclosure of Confidential Material:

23 All confidential records shall be controlled and maintained in a manner that precludes
 24 access by any person not entitled to access under this Protective Order. Any patient's
 25 confidential information shall be disclosed only to the following persons:

- (a) Counsel, including paralegal, investigative, secretarial, and clerical personnel who are engaged in assisting such counsel in the above-entitled action;
- (b) Any independent outside expert or consultant, and employees and assistants under the control of such expert or consultant, who is engaged by counsel in this litigation, whether or not such expert is paid directly by a party;
- (c) Any director, officer, or employee of a party who is requested by counsel for such party to work directly on the above entitled action;
- (d) Any deposition or trial witness;
- (e) Any person who authored or received the particular confidential information sought to be disclosed;
- (f) Any court or other shorthand reporter or typist recording or transcribing testimony; or
- (g) The Court.

Confidential information shall not be disclosed to persons described in Paragraphs 8(b), (c), or (d) unless or until such persons have been provided with a copy of this Protective Order and have agreed in writing to abide by and comply with the terms and provisions therein.

9. Use of Confidential Information During Discovery:

Depositions. A party may designate as confidential the deposition transcript and all exhibits to the deposition by indicating on the record at the deposition that certain information is confidential and subject to the terms of this Protective Order. Alternatively, the party may make a confidential designation by notifying all parties in writing within twenty (20) days after the deposition transcript is received by the party of the portions of the transcript and/or exhibits designated as confidential. During this interim twenty (20) day period, the entire transcript and the exhibits attached thereto shall be treated by all the parties as confidential. All transcripts and deposition exhibits containing any confidential information shall be marked: **“CONFIDENTIAL. Subject to restriction by a Protective Order.”**

1 Interrogatories and Requests for Production, and other discovery related matters. Use
 2 of confidential information during discovery shall be designated as follows:

- 3 (a) To designate a document as one containing confidential
 4 information, the party producing the document, shall stamp the
 5 first page and every page thereafter as follows:
**“CONFIDENTIAL. Subject to restriction by a Protective
 Order.”**
- 6 (b) All confidential documents produced by the parties during
 7 discovery shall be stamped as indicated in paragraph 9(a) above.
- 8 (c) Any responses to interrogatories, requests for production, or
 9 requests for admission, which are designated by a party as
 10 containing confidential information, shall be submitted in a
 11 separate document with each page stamped as indicated in
 12 paragraph 9(a) above.
- 13 (d) If documents are produced on a computer disc, and all documents
 14 on the disc contain confidential information, they shall all be
 designated confidential by application to the disc of a sticker
 bearing the language set out in paragraph 9(a). If any of the
 documents are used at depositions or attached to pleadings, each
 page of these documents shall be stamped as indicated in
 paragraph 9(a).

15 10. Use of Confidential Information at Hearing or Trial:

16 A party may, subject to the rules of evidence and order of the Court, use any
 17 confidential information for any purposes at trial or at any hearing before a judicial officer in
 18 the above entitled action. Any confidential information used in any court proceeding shall not
 19 lose its confidential status through such use, unless the Court orders otherwise.

20 11. Preservation of Rights and Privileges:

21 Nothing contained in this Protective Order shall (1) affect the right of any party or
 22 witness to make any other type of objection or claim; or (2) diminish the Washington
 23 Protection and Advocacy System’s federal access rights under 42 U.S.C. § 10801, et seq., as
 24 amended; 42 U.S.C. § 15041, et seq.; and the regulations promulgated thereunder.

1 12. Modification of the Protective Order:

2 This Protective Order shall not prevent a party from applying to the Court for relief
3 therefrom, or from applying to the Court for an additional protective order, or for modification
4 of this Order.

5 13. Return of Materials:

6 Within thirty (30) days after the conclusion of the above entitled action, including,
7 without limitation, any appeal or retrial, all confidential information, including copies, extracts,
8 or summaries, shall be returned to counsel who provided it, unless that person who is the
9 subject of such confidential material or that person's legal guardian, if any, directs that such
10 materials be given to that person's legal guardian instead of the producing party or upon
11 consent of counsel for the producing party. Alternatively, a party or counsel in possession of
12 documents containing confidential information shall certify in writing within the 30-day period
13 that all such documents have been destroyed. As to those materials which contain confidential
14 information, but constitute or reflect counsel's work product, all such work product and all
15 copies shall either be destroyed or retained by counsel in a secure place, subject to this
16 Protective Order.

17 14. Inadvertent Disclosure:

18 Should any confidential information be disclosed, through inadvertence or otherwise, to
19 any person not authorized to receive it under this Protective Order, then the disclosing
20 person(s) shall promptly: (a) identify the recipient(s) and the circumstances of the
21 unauthorized disclosure to the relevant producing person(s); and (b) use best efforts to bind
22 the recipients to the terms of this Protective Order. No information shall lose its confidential
23 status because of its disclosure to a person not authorized to receive it under this Protective
24 Order.

15. Upon conclusion of the above entitled action, the provisions of this Protective Order shall continue to be binding.

16. This Protective Order shall remain in full force and effect until modified, superseded, or terminated by consent of the parties or by Order of this Court made upon reasonable written request.

Dated this 3rd day of March, 2006.

/s/ J. Kelley Arnold
THE HONORABLE J. KELLEY ARNOLD
United States Magistrate Judge

Presented by:

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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1 I also hereby certify there are no attorneys on the Manual Notice List in this case.

2 DATED this 23rd day of February, 2006.

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